

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 EARL DAVIS,

4 Plaintiff,

5 vs.

6 SALANDER O'REILLY GALLERIES
7 L.L.C., et al.,

8 Defendants.

Case No. 07-cv-04165-SHS-DCF

New York, New York

Friday, October 19, 2007

9 TRANSCRIPT OF CONFERENCE AND ORDER TO SHOW CAUSE
10 BEFORE THE HONORABLE SIDNEY H. STEIN
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

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1 I will enter an order saying that we had a pretrial
2 conference today, and all parties appearing, and the October
3 24th date to amend pleadings and add additional parties set
4 forth in the scheduling order -- is it a written order from
5 Judge Freeman?

6 MR. LARKIN: Yes, Your Honor.

7 MR. NICYPER: It's part of the scheduling order, yeah.

8 THE COURT: All right. The scheduling order is
9 extended until November 7; that's two weeks. Okay?

10 Then everything in my order dated October 10 is still
11 in place; that is, the joint pretrial order, proposed jury
12 charges, and motions in limine are due on January 22. Final
13 pretrial conference on January 22 at 4 p.m. Trial begins
14 February 11, 9:30 a.m.

15 I think there are some other intermediate steps; that
16 is, the end of fact discovery and the end of expert discovery,
17 in Judge Freeman's scheduling order. Those are still in
18 effect. But I think it makes sense, in terms of this
19 litigation, for you to just be coming to me.

20 I'm sure we'll be talking before January 22nd. You
21 can reach me at any time by speaking to my deputy, and she'll
22 set up a conference.

23 Mr. Larkin, I do have this order to show cause
24 outstanding. Do you want me to hold it in abeyance? Do you
25 want me to state that it's withdrawn without prejudice? I

1 think a withdrawal without prejudice will just clear it out.

2 Sir?

3 MR. MOLLON: (Not identified) Yes, Your Honor. Since
4 it's my affidavit, I might as well respond to it.

5 THE COURT: Sure.

6 MR. MOLLON: I think the order -- just to be clear,
7 the application was with respect to our representation of Mr.
8 Salander, personally.

9 THE COURT: Yes, I saw that.

10 MR. MOLLON: Okay. And I think we actually prefer not
11 to withdraw that. We've spoken to Mr. Salander. I think by
12 whenever the return -- I don't know that there is a return
13 date.

14 THE COURT: No. I had to sign it, and I wasn't going
15 to sign it until I talked to you, nor certainly wasn't going to
16 grant it until I found out more about the underlying facts,
17 because there is insufficient information in the moving papers
18 on which to act.

19 MR. MOLLON: That's fine. I mean, perhaps we can hold
20 it in abeyance, and if we want to renew it, we'll renew it.

21 THE COURT: All right. Fine.

22 MR. MOLLON: If there's new counsel, perhaps we can
23 just do a substitution, and that would be easier. We do intend
24 to withdraw as counsel for Mr. Salander personally, for the
25 reasons --

1 THE COURT: Well, but you're not asking me to enter
2 that order right now.

3 MR. MOLLON: Not right now, no.

4 MR. LARKIN: Yeah, that's correct, Your Honor. We
5 believe he will obtain new counsel, and so then we may be able
6 to substitute the motion for withdrawal with a substitution of
7 counsel.

8 MR. NICYPER: Our only concern, Your Honor, of course,
9 would be that there would be any chance that there's any time
10 when Mr. Salander would not be represented by counsel. I think
11 that's very important in this and all cases.

12 THE COURT: Well, right now, he has counsel --

13 MR. NICYPER: Yes.

14 THE COURT: -- and we'll deal with that if and when we
15 come to it; but right now, he has counsel. That's my concern.

16 (Pause in proceedings.)

17 MR. LARKIN: Your Honor?

18 THE COURT: Yes.

19 MR. LARKIN: I just had a thought that maybe, rather
20 even than hold this motion in abeyance, we set a return date
21 after the two-week period where, if we decide to go forward
22 with the motion, we can do so or otherwise withdraw.

23 THE COURT: You know, that probably makes more sense.
24 I was endorsing it, saying:

25 "It's hereby ordered that, as set forth in the

1 pretrial conference on October 19th, this application
2 is held in abeyance."

3 But I think your suggestion makes more sense. All
4 right?

5 MR. LARKIN: Okay.

6 THE COURT: So I'm going to cross out what I just
7 added, and I'll have --

8 MR. LARKIN: Your Honor.

9 THE COURT: Yeah.

10 MR. LARKIN: How about we put it on for next Friday.
11 We should know one way or the other.

12 THE COURT: I'll give you two weeks.

13 MR. MOLLON: Thank you.

14 MR. LARKIN: Thank you, Your Honor.

15 (Pause in proceedings.)

16 (Court and court personnel confer.)

17 THE COURT: All right. I'm saying that the order --
18 that:

19 "Plaintiff shall show cause November 2nd at 10 a.m.
20 why an order should not be entered granting
21 defendants' motion for leave to withdraw as attorneys
22 of record for Mr. Salander."

23 And we'll have service by today. I assume you've
24 already seen these papers, sir?

25 MR. NICYPER: No, I haven't seen them.

1 THE COURT: All right. You can serve them right now,
2 so we'll make it on or before October 19th. Opposition shall
3 be served by hand-delivery on, we'll make it November 1. Reply
4 papers on or before 10 a.m. on November 2.

5 And make sure you serve Mr. Salander, so he knows what
6 you're doing, too.

7 MR. LARKIN: Absolutely, Your Honor.

8 THE COURT: All right. Return date November 2, 10
9 a.m. Opposition papers November 1, reply papers November 2.
10 And as I said, on the state of these papers, I would not grant
11 it; I'd need to know more facts.

12 MR. LARKIN: Understood, Your Honor.

13 THE COURT: All right. Anything else? Plaintiff,
14 anything?

15 MR. NICYPER: Nothing additional, Your Honor, at this
16 time.

17 THE COURT: All right. Defendant?

18 MR. LARKIN: No, Your Honor.

19 THE COURT: All right. Thank you all.

20 MR. MOLLON: Thank you, Your Honor.

21 (Proceedings concluded.)

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CERTIFICATION

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter to the best of my knowledge and ability.

A handwritten signature in cursive script that reads "Coleen Rand".

October 22, 2007

Coleen Rand, AAERT Cert. No. 341
Certified Court Transcriptionist
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